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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Toshio HARIMA

Examiner: **Bumgarner**

Serial No: **10/625,531**

Group Art Unit: **3732**

Filed : **June 24, 2003**

For : **ORTHODONTIC WIRE RETAINER**

**RESPONSE TO NOTIFICATION OF
NON-COMPLAINT APPEAL BRIEF**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
response to Notification of Non-Compliant
Sir:

The notification dated November 9, 2005, indicated that the Brief did not contain items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order. A review of the Brief reveals that the Brief filed on August 5, 2005, included all seven sections under the proper heading and the three required appendices. The reason for this indication on the Notification is not understood.

The Notification also stated that the Brief did not contain a concise explanation of the subject matter defined in each of the independent claims referring to the specification by page and line number and to the drawings by reference to the character. Under the summary of claimed subject matter, reference to the drawings were made by reference, character and specific reference to Figures 3 and 4 were included. With the amended brief has a reference to claim 1, the only independent claim, and has added references to Figure 2 and to paragraphs 13-15, in the appropriate place.

The Brief is fully compliant with all the rules.

Respectfully submitted,


Christopher J. McDonald
Reg. 41,533

November 15, 2005
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Attorney Docket No. A-7492.AB Cover Letter/cat



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APPLICANT'S APPEAL BRIEF
UNDER 35 U.S.C. §41.37

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

(1) REAL PARTY IN INTEREST

The real party in interest is the inventor, Toshio Harima.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

(3) STATUS OF CLAIMS

Claims 1-10 are pending. All claims are rejected and appealed.

(4) STATUS OF AMENDMENTS

An Amendment After Final Rejection was filed on April 11, 2005. The amendment is entered for purposes of appeal.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

An orthodontic wire retainer is applied to a dental arch following an orthodontic treatment. Claim 1 recites a wire retainer having a first wire **11**, extending along the posterior surface of the dental arch **10**, a second wire **12**, extending in a loop along the anterior surface of the dental arch **10**, and a third wire **13**, fitting between a bicuspid tooth **20** and a premolar **30** and attached to the first and second wires **11**, **12**. All wires are clearly seen in Figure 2 and described in paragraph [0013]. Once joined, the first, second and third wires form an integral bridge **14**, providing resilient support for the arch. The support forms a dental arch bracing appliance, transmitting orthodontic pressure.

To further prevent sinking of the wire retainer, a wire clasp **16** lays along the buccal surface of the premolar, as shown in Figure 3, as described in paragraph [0014]. As seen in this figure, the wire clasp has a general W-shape when seen from the side. The wire clasp **16** is attached to the first metal wire **11** to sustain strength of the wire retainer. The wire clasp **16** holds both the buccal surface and lingual surface of the premolar and prevents sinking of the first metal wire. In addition to the wire clasp **16**, a wire rest **17** rests upon the premolar **40**, shown in Figure 4 and described in paragraph [0015]. The wire rest attaches to the first metal wire **11** and prevents elongation of the premolar and sinking of the wire retainer.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1) Claims 1-10 rejected under 35 USC 112, second paragraph as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2) Claims 1-5,7,8 and 10 rejected as anticipated by US patent 4,725,230 (Harima).

3) Claims 6 and 9 rejected as being obvious over Harima.

(7) ARGUMENT

Rejection under 35 USC 112, second paragraph

Claims 1-10 are rejected as being indefinite, as the Examiner does not see how the wire rest is spaced from the end of the first wire.

Attached to this response is an annotated Figure 2 showing the claimed elements. Seen in this view is the first wire 11 extending past the two molars 40. The end of the first wire is spaced near the second molar. The wire rest, extending from the first wire 11, is shown as positioned between the premolar 30 and first molar. Therefore, the rest 17, while extending from the first wire, is spaced from the end of the first wire, as is claimed.

Rejection as anticipated under 35 USC 102(b) by US patent 4,725,230


The Examiner rejects claims 1-5, 7, 8 and 10 as being anticipated by U.S. Patent 4,725,230 (Harima). The retainer disclosed by Harima does not have a wire rest meeting this limitation of claim 1. In the rejection, the Examiner states that Figure 1 of Harima shows a wire rest spaced from the end of the first wire, having a first section attached to the first wire and extending toward the second wire and being L-shaped. No reference numerals are provided in the rejection and no such structure in Figure 1 is seen by Applicant.

Rejection of claims 6 and 9 under 35 USC 103(a) by US patent 4,725,230.

The Examiner rejects claims 6 and 9 as obvious over Harima and states that it would have been obvious to have the second section of the L-shaped wire rest extend toward the third wire. While the structure relied upon by the Examiner as the wire rest is not clear to applicant, there is no teaching reference to support the modification proposed by the Examiner.

It is respectfully requested that the Examiner's rejections be reversed and the claims allowed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Christopher J. McDonald', is written over a horizontal line.

Christopher J. McDonald
Reg. 41,533

November 15, 2005
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CLAIMS APPENDIX

1. An orthodontic wire retainer, comprising
a first metal wire for conforming to the posterior surface of a dental arch;
a second metal wire for conforming to the anterior surface of the dental arch;
a pair of third metal wires extending between the first metal wire and second metal wire;
said third metal wires attached to said first and second metal wires to form an annular bridge providing a resilient support for teeth along the dental arch;
a wire rest extending from said first wire for resting upon the top surface of the dental arch, said wire rest spaced from the end of the first wire.

2. The orthodontic wire retainer of claim 1, further comprising a wire clasp.

3. The orthodontic wire retainer of claim 2, wherein said wire clasp is W-shaped.

4. The orthodontic wire retainer of claim 1, wherein said wire rest is L-shaped.

5. The orthodontic wire retainer of claim 1, wherein said wire rest has a first section attached to said first wire and extending toward said second wire.

6. The orthodontic wire retainer of claim 5, wherein said wire rest has a second section attached to said first section and extending toward said third wire.

7. The orthodontic wire retainer of claim 1, further comprising

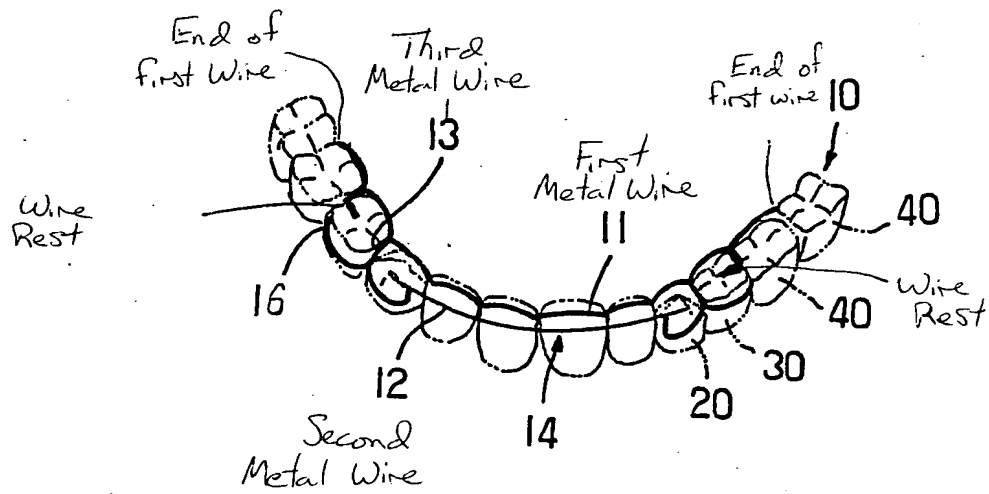
a second wire rest extending from said first wire for resting upon the top surface of the dental arch, said second wire rest spaced from the end of the first wire.

8. The orthodontic wire retainer of claim 7, wherein said second wire rest has a first section attached to said first wire and extending toward said second wire.

9. The orthodontic wire retainer of claim 8, wherein said second wire rest has a second section attached to said first section and extending toward said third wire.

10. The orthodontic wire retainer of claim 7, wherein said second wire rest is L-shaped.

EVIDENCE APPENDIX



RELATED PROCEEDINGS APPENDIX

None